IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.CJ.

APPEAL NO. 694 OF 2006
IN
ARBITRATION PETITION (LODGING) NO.451 OF 2006

BGH Exim Ltd. .. Appellant
v/s.
Anesh Benzo Plast Limited .. Respondent

Mr. D.D. Madon, senior counsel with Mr. Berjis Coolabawala i/by M/s.Madekar & Co. for the Appellant.

Mr. Gaurav Joshi with Mr. Rajiv Bhatia i/by M/s. Little & Co. for the respondent.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 18TH SEPTEMBER, 2006.

P.C.

Heard Mr. D.D. Madon, the senior counsel for the appellant and Mr. Gaurav Joshi, the counsel for the respondent.

2. The respondent in his affidavit opposing admission and grant of interim relief dated 22nd August, 2006 before the learned Single Judge, stated that the subject tank being Tank No.201 has already been given on hire basis to the third party with effect from 20th July, 2006. We are informed by Mr. Gaurav Joshi that the said third party is M/s.Adani Exports Limited who have imported Naptha and that is to be stored in the said tank.

3. Obviously, in view thereof, the appellant was not entitled to any interim relief under section 9 of the Arbitration and Conciliation Act, 1996 even if it were held that there was concluded contract between the parties.

4. In our considered opinion, therefore, the impugned order does not call for any interference. Needless to say that the observation made by the learned Single Judge that there was no concluded contract between the parties, is only on prima facie consideration of the matter and in case the dispute between the parties is ultimately referred to the Arbitrator, the Arbitrator shall not be bound by the said finding and independently examine the existence of the contract between the parties.

With the aforesaid observation, appeal is dismissed.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)